3162.

SUPREME COURT OF THE UNITED STATES.

No. 90.

THE STEAMBOAT NEW WORLD, EDWARD MINTURN, WILLIAM MENZIE & WILLIAM H. WEBB, CLAIMANTS, APPELLANTS,

vs.

FREDERICK G. KING.

APPEAL FROM THE DISTRICT COURT U. STATES, FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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To the honorable Ogden Hoffman, junior, judge of the district court of the United States, for the northern district of California.

The libel of Frederick George King, a resident of the city of San Francisco, against the steamboat "New World," her tackle, apparel, and furniture, now being in the custody of the marshal of the district aforesaid, under and by virtue of a warrant issued out of this court, in a writ of Freeland and others against the steamboat New World, and all persons lawfully intervening for their interest in the said steamboat, her tackle, apparel, and furniture, in a cause of damages, civil and maritime, alleges as follows:

First. That in the month of June, in the year eighteen hundred and fifty-one, the said vessel being at the port of Sacramento, in the State of California, within the ebb and flow of the ocean tide, and destined on a voyage from thence to the port of San Francisco in said State, the said libellant embarked on board of said vessel as a passenger from the said port of Sacramento to the said port of San Francisco; and the agreement, under and by virtue of which the said libellant embarked upon said vessel at the port of Sacramento, was, in substance, that the said libellant should pay the sum of five dollars to the agent or person on board of said vessel, duly authorized to receive the same, for his freight or safe carriage, which said sum of money was the usual charge then demanded by said vessel, and was ready to be paid when demanded of this libellant, according to the usage of said vessel, for the passage or transportation of a single adult passenger from said port of Sacramento to said port of San Francisco.

Second. That said voyage commenced about the third day of June, 1851, and after the said vessel had continued thereon for about the space of three hours, and while within the ebb and flow of the tide, the master of said vessel, by himself or agents on said vessel so navigating the tide waters, and propelled on its course towards the said port of San Francisco by the agency of heat applied to water confined in a large boiler on board of said vessel, and by means of certain machinery constructed of iron and attached to said boiler, negligently, carelessly, and regardless of the safety of said libellant, and of his safe arrival at the port of San Francisco aforesaid, generated, by the aid of fire in furnaces under said boiler, more hot steam than the said boiler and certain cylinders, pipes, or flues attached to said vessel, and forming part of the machinery for confining or transmitting said steam, were capable of containing or carrying off.

That soon after the said master or his agents had so negligently accumulated or generated an extra press of steam on board of said vessel, and while another steam vessel known as the "Wilson G. Hunt" was in pursuit of the said steamboat "New World," the boiler, pipe, flue, or some part of the steam apparatus of said "New World" burst, thereby permitting the hot steam and hot water so generated to escape,

and, without any fault on the part of this libellant, to scald and wound the body, feet, head, hands, and legs of this libellant, so severely as to render him senseless and unable to move his person, or in any way to help himself for many days. That thereafter, and for the space of six months, the said libellant was confined to his room, and five months to his bed, and under the care of a physician and nurses. That this libellant was, by reason of the explosion aforesaid, maimed, injured and permanently crippled in his hands, head and body, and the same are also irreparably disfigured. That before said scalding this libellant was a laborer, and possessed of all the physical qualifications of a working man; but since he received such injuries, while a passenger on the said steamer "New World," he is and ever will continue to be crippled and unable to perform any work requiring bodily exertion or strength. Whereby the said libellant suffered during said voyage, and since and still continues to suffer severe pain, and to be infirm, to the great and permanent injury of his health and comfort, and the total disability of the libellant to maintain and support himself; and the libellant claims ten thousand dollars damages.

Third. That the said steamboat "New World" is now in the said port of San Francisco, and within the jurisdiction of this honorable court.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that he may be allowed to intervene for his said claim, in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction; and that process of monition may issue to the marshal of this district aforesaid, commanding him to cite and admonish all persons having or pretending to have any right and title or interest in the said steamboat "New World," her tackle, apparel, and furniture; and that all persons having any interest therein may be cited to appear before this honorable court, on the twelfth day of February, 1852, or on such other day to be inserted in the said monition as the court shall direct, and then and there to answer the libellant in the premises all and singular the matters herein before set forth; and that this honorable court would be pleased to pronounce for the libellant, and to decree payment of the damages aforesaid, with costs; and that the said steamboat may be held condemned, and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

FREDERICK GEORGE KING.

Sworn to, 9th day of February, 1852, before me,

HENRY B. JANES,
U. S. Commissioner.

S. L. BURRIT, *Proctor for libellant.*
H. C. CLARK, *Advocate.*

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

The President of the United States of America to the marshal of the northern district of California, greeting:

Whereas a libel hath been filed in the district court of the United States, for the northern district of California, on the 15th day of December, in the year of our Lord one thousand eight hundred and fifty-one, by James Freeland et al. against the steamer "New World," and Frederick George King has this day witnessed for his interest therein, for the reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in said steamer or vessel, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had, that the said steamer or vessel, her tackle, etc., may for the causes in said libel mentioned be condemned and sold to pay the demands of the libellants.

You are therefore hereby commanded to attach the said steamer, her tackle, etc., to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before said court to be held in and for the northern district of California, on the 10th day of February, at 11 o'clock, in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Ogden Hoffman, jr., judge of said court, at the city of San Francisco, in the northern district of California, this 10th day of February, in the year of our Lord one thousand eight hundred and fifty-two, and of our independence the seventy-sixth.

JOHN A. MONROE, *Clerk.*
By HENRY B. JANES, *Deputy.*
S. L. BURRIT, *Proctor for libellant.*

The within named steamer New World was seized by virtue of a prior process, but released by order of proctor for libellants, but will be held to the same extent as on the original writ by this process. This 10th day of February, 1852.

D. F. DOUGLASS, *U. S. M.*
By GEO. P. JOHNSON, *Deputy.*

Answer.

To the honorable Ogden Hoffman, jr., judge of the district court of the United States, in and for the northern district of California. In admiralty.

The answer of Charles Minturn, agent for the steamboat "New World," to the libel of intervention of Frederick George King, in the suit of and Freeland vs. The New World, in your honorable court, shows to this court articulately, as follows:

First. That the said Frederick George King did not, as alleged in article first of his said libel of intervention, enter upon the said steamboat New World under the agreement stated in said first article, or under any agreement express or implied, that he, the said Frederick George King, should pay the sum of five dollars or any other sum whatever for his freight or safe carriage, nor under any other contract express or implied whatever.

Second. That the said Frederick George King, in entering said New World, on the said third day of June, to take passage from Sacramento as aforesaid, did so enter as a "dead head" or non-paying and gratis passenger for his own mere profit and pleasure, without any advantage pecuniary or otherwise accruing or to accrue to the owners of said steamboat New World for such his passage.

Third. That for a long time before, the said Frederick George King had been in the frequent and common habit of so as aforesaid entering on said steamboat New World, and being carried on such boat to such place as his business or pleasure should call for his own mere profit, and as a "dead head" aforesaid, and well knew the place at which said boat was propelled, and the skill and prudence of her officers, engineers, and crew, and the means of such propulsion; and in so entering, did so at his own risk as well as for his own convenience, pleasure and profit.

Fourth. That the master of said steamboat did not, by himself or his agents, negligently, carelessly, nor at all, generate more hot steam than the boilers, cylinders, pipes or flues attached to said vessel were capable of containing or carrying off, and that extra press of steam was generated or accumulated on board of said vessel. That the steamer "Wilson G. Hunt" did not pursue said steamer New World on such passage; that it is true that a part of the steam apparatus of said steamboat New World on said passage did burst, and that the steam which escaped thereby may have burnt and scalded the said Frederick George King, but that said bursting and such escape of said steam was not owing to or occasioned by any carelessness, negligence, or want of skill on the part of the owners, master, engineers, officers or crew of said boat, nor to any defect in the construction of the said boat or any part of her engines, machinery, boilers, or steam apparatus; but was owing to an unusual, unprecedented corrosion.

Fifth. That the extent to which said Frederick George King was injured in his person or his pecuniary affairs by such burning and scalding is not known to me the said agent, nor have I been informed, save by the said libel of intervention; but I, the said agent, believe them to be greatly exaggerated in said libel of intervention of him, the said Frederick George King.

Sixth. That the master, engineers, officers and crew of said steamboat New World at the time of such explosion, and for a long time before, were skilful, careful, diligent and prudent, and did all for the

Notice of appeal.

District court of the United States, for the northern district of California.

FREDERICK GEORGE KING
vs.
THE STEAMBOAT NEW WORLD, her tackle, etc., Edward Minturn, William Menzie, and William H. Webb, claimants and respondents.

SIR: The above named claimants and respondents intend to appeal from the final decree of the court in this cause.

A. T. WILLSON,
Proctor for respondents.

Dated July 1st, 1852.

To JOHN A. MONROE, esq., *Clerk*.

Appeal to Supreme Court.

District court of the United States, for the northern district of California, possessing the powers and jurisdiction, and acting as a circuit court.

FREDERICK GEORGE KING
vs.
THE STEAMBOAT NEW WORLD, her tackle, etc., Edward Minturn, William H. Webb, and William Menzie, claimants and respondents. } In admiralty.

The above named respondents, conceiving themselves aggrieved by the final sentence or decree entered on the 23d day of June, A. D. 1852, in the above entitled cause, hereby appeal therefrom to the Supreme Court of the United States; and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court aforesaid.

EDWARD MINTURN,
WILLIAM H. WEBB, and
WILLIAM MENZIE.
A. T. WILLSON, *Proctor*,
JOHN S. HAGAR, *Advocate*.

Petition of appeal.

District court of the United States, for the northern district of California, possessing the powers and jurisdiction, and acting as a circuit court.

safety and security of said boat and all persons that skill, care, diligence and prudence could do.

Seventh. That all and singular the premises are true, wherefore may it please this honorable court to pronounce against the claim of the said Frederick George King, and dismiss his libel of intervention with costs.

CHARLES MINTURN.

Sworn to, February 17th, 1852.

HENRY B. JANES,
U. S. commissioner.

Note of issue.

In the district court United States, northern district California.

In admiralty.

GEORGE FREDERICK KING vs. The STEAMER NEW WORLD. } Libel.

Issue joined, March 3d, 1852.

S. L. BURRITT, *for Libellant.*
A. T. WILSON, esq., *for Claimant.*

April 19, 1852.

Final decree.

At a general term of the district court of the United States of America, for the northern district of California, held at the court room in the city of San Francisco, on Wednesday, the twenty-third day of June, in the year of our Lord one thousand eight hundred and fifty-two; present the honorable Ogden Hoffman, junior, district judge:

JAMES FREELAND et als. vs. The STEAMER "NEW WORLD," her tackle, &c. Frederick George King's intervention.

This cause having been heard on the pleadings and proofs, and having been argued by the advocate for the respective parties, and due deliberation having been had in the premises, it is now ordered, adjudged, and decreed by the court, that the said libellant, intervenor, do recover the sum of twenty-five hundred dollars damages, together with his costs to be taxed; and that the said vessel, her tackle, apparel, and furniture, be condemned to satisfy this decree; and it is further ordered, sentenced, and decreed, that the clerk of the court issue a venditioni exponas to the marshal of the district for the sale of the said vessel, her tackle, etc., and that out of the proceeds of the sale, when paid into the registry of the court, the clerk of this court pay to the libellant, Frederick George King, or his proctor, the said damages, together with his taxed costs.

OGDEN HOFFMAN, JR.,
U. S. district judge.

EDWARD MINTURN, William H. Webb, and William Menzie, claimants of the steamboat New World, her tackle, etc., appellants, vs. FREDERICK GEORGE KING, appellee.

To the Supreme Court of the United States:

The petition of appeal of the above named Minturn, Webb, and Menzie, respectfully shows:

That a decree was lately made in the above named district court, acting as a circuit court, bearing date on the 23d day of June, A. D. 1852, in a certain cause of admiralty and maritime jurisdiction in the said court, wherein the above named Frederick George King was libellant, and the above named steamboat New World was defendant, the said Minturn, Webb, and Menzie having interposed a claim to said steamboat, and answered the libel filed in this cause, in and by which said decree it was ordered, adjudged, and decreed that the said Frederick George King should recover the sum of twenty-five hundred dollars for the damages sustained by said King, as alleged and charged in his libel filed in this cause, and his costs be taxed; and that the said vessel, her tackle, apparel, and furniture, should be condemned, to satisfy the said decree; which said decree is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore these applicants respectfully pray that the said decree may be reversed, and that such other decree may be made by this court as shall be agreeable to equity and good conscience; and these appellants, as in duty bound, will ever pray.

July 2, 1852.

A. T. WILLSON,
Proc. for appellants.
JOHN S. HAGAR,
Advocate.

Bond.

Know all men by these presents, that we, Charles S. Caro and William Langerman, merchants residing in the city of San Francisco, are held and firmly bound unto Frederick Geo. King, of the same place, in the sum of six thousand dollars, to be paid the said Frederick Geo. King, his executors, administrators, and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, dated this second day of July, in the year of our Lord 1852.

Whereas Edward Minturn, William Menzie, and Wm. H. Webb *has* appealed to the Supreme Court of the United States, from a decree of the district court of the United States, for the northern district of California, possessing the powers and jurisdiction of, and sitting as a circuit court, bearing date on the 23d day of June, 1852, in a

cause in which the said Frederick George King was libellant, and the said Minturn, Webb, and Menzie were claimants of the steamboat New World, her tackle, &c., and respondents. Now, therefore, the condition of the above obligation is such, that if the above named appellants shall prosecute their appeal with effect, and pay all such costs and expenses as shall be awarded against them on the appeal, as such appellants, and all damages that shall be awarded to libellant therein, then this obligation to be void, otherwise to remain in full force and effect.

WILLIAM LANGERMAN, [SEAL.]
CHARLES S. CARO, [SEAL]

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

Charles S. Caro and William Langerman, being duly sworn, deposes, each for himself, that he is a freeholder in said district, and is worth the sum of six thousand dollars, over and above all just debts and liabilities, and property exempt from execution.

WILLIAM LANGERMAN,
CHARLES S. CARO.

I hereby direct that the within bond be executed, in the sum of six thousand dollars, by two sureties, each of which shall justify in that sum, over and above all just debts and liabilities, and property exempt from execution.

July 2d, 1852.

OGDEN HOFFMAN, Jr.,
U. S. district judge.

Notice of appeal and citation to U. S. Supreme Court.

UNITED STATES OF AMERICA, *ss.*

To Frederick George King, greeting:

Whereas Edward Minturn, William H. Webb, and William Menzie, claimants of the steamboat New World, her tackle, etc., have appealed to the Supreme Court of the United States from a decree lately rendered in the district court of the United States, for the northern district of California, possessing the powers and jurisdiction, and acting as a circuit court, made in favor of you, the said Frederick George King, against the said steamboat, her tackle, etc., and have filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the 2d Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of San Francisco, in the northern district of California, on the 2d day of July, A. D. 1852.

OGDEN HOFFMAN, Jr.,
U. S. district judge.

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Affidavit of service of notice.

Supreme Court of the United States.

EDWARD MINTURN, William H. Webb, and William Menzie, claimants of the steamboat New World, appellants,
vs.
FREDERICK GEORGE KING, appellee.

NORTHERN DISTRICT OF CALIFORNIA.

H. N. Squires and Warren B. Mead, being duly sworn deposes, each for himself, and first, the said Squires deposes, that on the second day of July instant he delivered to Warren B. Mead above named a copy of the citation and appeal filed with the clerk of the district court of the United States for the northern district of California, possessing the powers and jurisdiction, and acting as a circuit court; and the said Mead deposes, that on the third day of July instant he served said copies on the above named King by delivering the same to him personally.

HORATIO N. SQUIRE,
WARREN B. MEAD.

Severally subscribed and sworn before me this 7th day of July, 1852.

HENRY B. JANES,
U. S. commissioner.

Affidavit of service of notice.

District court of the United States for the northern district of California, possessing the powers and jurisdiction, and acting as a circuit court.

FREDERICK GEORGE KING
vs.
THE STEAMBOAT NEW WORLD, Edward Minturn, William H. Webb and William Menzie, claimants.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

H. N. Squires and Warren B. Mead, being duly sworn, deposes each for himself, and first, the said Squires deposes, that on the 2d day of July instant he delivered to said Mead a copy of the citation and appeal filed in this cause with the *the* clerk of the above named court, and at the same time instructed the said Warren B. Mead to serve the same on said King by delivering the same to him personally; and the said Warren B. Mead deposes, that he, Warren B. Mead, received from said Squires the said copy of citation and appeal, and served the same on the said King on the 3d day of July instant, by delivering the same to him personally.

HORATIO N. SQUIRE,
WARREN B. MEAD.

Severally subscribed and sworn before me on this 7th day of July, 1852.

HENRY B. JANES,
U. S. commissioner.

District court of the United States for the northern district of California, possessing the powers and jurisdiction, and acting as a circuit court.

EDWARD MINTURN, William Menzie and William H. Webb, claimants of the steamboat New World, appellants,
vs.
FREDERICK GEORGE KING, libellant.

To the honorable the district court of the United States for the northern district of California, possessing the powers and jurisdiction, and acting as a circuit court.

The appeal of the above named appellants respectfully showeth, that on or about the tenth day of February, in the year one thousand eight hundred and fifty-two, the above named libellant, Frederick George King, exhibited his libel in the district court of the United States for the northern district of California, against the steamboat New World, her tackle, &c., claiming over fifty dollars, praying among other things, for the reasons set forth in said libel, that the said vessel, her tackle, &c., be condemned to pay the demands of said libellant and costs in said libel mentioned. That process issued out of said court having been served, these appellants did, on or about the 17th day of February, in the year one thousand eight hundred and fifty-two, file their answer to the said libel in the said district court, praying that the said libel be dismissed with their costs in that behalf, as by reference to said libel and the said answers may more fully appear; that the said cause came on to be heard before the honorable Ogden Hoffman, jr., judge of the said district court, on or about the fifth day of May, in the year 1852, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the said judge having advised thereon, on the 23d day of June, in the year 1852, made a decree or sentence in said cause, whereby it was among other things sentenced and decreed, that the libellant in said cause should recover against the said steamboat her tackle, &c., the sum of twenty-five hundred dollars, and his costs to be taxed, as by reference to the said decree may more fully appear.

And these appellants are advised and insist, that the said decrees are erroneous, inasmuch as the said libellants were not entitled to any damages whatever; and these appellants, for these and other reasons, appeal from the whole of the said decree in favor of said Frederick George King, to the next district court possessing the powers and jurisdiction and acting as a circuit court, to be held in said district.

And he prays that the said decree, and every part thereof, may be

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reversed, with costs, or such other decrees thereupon made as to the said circuit court shall seem just, and that the said appellees be condemned to pay to these appellants their costs and damages in the premises. And they pray that the record and proceedings may be returned to the said district court possessing the powers and jurisdiction, and acting as a circuit court. And that the said decree may be reversed, or such other decree thereon be made as to said appellate court shall seem just, and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

EDWARD MINTURN,
WILLIAM H. WEBB,
WILLIAM MENZIE,
By A. T. WILLSON, *Proctor*.
JOHN S. HAGAR, *Advocate*.

Petition of Appeal.

NORTHERN DISTRICT OF CALIFORNIA, *ss*.

Matthew Joyce, being duly sworn, deposes, that on the tenth day of July, 1852, he served a copy of the within petition of appeal personally on S. L. Burritt, esq., proctor for the appellee.

MATTHEW JOYCE.

Subscribed and sworn before me, this 10th day of July, 1852.

District court of the United States, for the northern district of California.

FREDERICK GEO. KING, libellant,
vs.
STEAMER NEW WORLD, et al., claimants, &c. } In admiralty.

The amendments herein proposed are agreed to by the parties in this cause as a true statement of the proofs, and all the proofs in this cause taken in the district court.

William Galloway,

Sworn, says: Am a pilot on the "Wilson G. Hunt;" was so on the third of June last. I hardly know whether boats were racing. We were both doing our best that day. The quickest time we can make is to get to Cash creek 20 minutes after 4; on that day we would have got there at twenty-five after 4 o'clock. At the time of the explosion the "New World" was 5 minutes from Cash creek; the "Hunt" 7½ from it. Boats will vary from 3 to 5, 7 or 8 minutes, according to tide. Some call the distance from Sacramento 36, 40, or 45 miles; nobody knows. We leave punctually at 2 o'clock. About that time we had been contending to get to Benicia first, and get the passengers. The influence of the tide is felt at Sacramento. A high pressure of steam cannot be used in shoal water. It is the custom on board these

boats to retain steam on shoal water to be used on deep water. Objected to. It is, so far as first-class boats are concerned. I have been on the New World, and she does it. It is known to all of us steamboat men. Whether it is dangerous, depends upon the amount of steam.

Cross examined.—Have been employed on the New World. Don't know how long, or when. I might call to my mind with a little reflection. My business as pilot led me to know about putting on and shutting off steam. I informed myself on the point by observation, by leaving my place in the pilot house and walking into the engine room. It is customary for the pilot to direct the engineer to shut off steam. One can tell whether steam is retained by looking into the engine room. I can tell whether the reducing of speed of the boat is by retaining the steam, in certain cases. I think I was on board the "New World" some months. Can't recollect. The engineer of the "New World" is a very careful and attentive man.

Direct.—The explosion occurred on shoal water. It is 5 minutes run from there to deep water.

Cross examined.—Steam may be reduced by pumping in cold water, but it never is. When the order is given by pilot, they always close the throttle valve.

Direct.—It is a material advantage to have the steam when we get into deep water. They usually open the furnaces and clean fires, and reduce the steam in that way on shoal water. It saves the trouble of having the bell rung.

Direct.—I do not mean, don't mean to say the engineer was in the habit of retaining his steam. I know he was a very careful man.

William Chudley.

I was on board the "Wilson G. Hunt" on 3d June, 1851. Both boats were doing their best. She had been in the habit of racing before this. There may have been a quarter of a mile between them.

C. T. Fay.

Was a passenger on board the "Hunt;" have been in the habit of traveling on the river for the last twelve months. I should think the boats were racing; were both doing their best. Had been in the habit of contending for the mastery. They were doing as well as on other occasions when I have known them to be racing.

Cross examined.—I knew they were racing on previous occasions from observation; by casual remarks; by noticing the speed of the boats. I understand by racing, trying to beat the one opposed to them. The boats were going faster, in my opinion, that day than on previous days. One of the sufferers that day was an acquaintance of mine. I assisted him—took charge of him. Had never been much in the habit of traveling on boats before arriving in this country. Passengers are likely to suspect racing when they see two boats together.

Direct.—There was some little excitement on board; there was some

little attempt on the part of the "Hunt" to pass the "New World," on two occasions previous to getting to the slough; did not succeed. That would naturally create an excitement. In passing through the slough the "Hunt" was very near the "New World;" obliged to slack up to allow her to get out of the way.

Cross examined.—It is possible, but I don't think that I have confounded this trip with another; the same impression might have been created if the boats had been going at a moderate speed.

James Henry.

Have been employed on board the "Hunt;" I was at the particular time assistant pilot. In answer to the question, whether they were racing? the boats were always supposed to come down as fast as possible; the first boat at Benicia gets from 25 to 50 passengers. The "Hunt's" time to the slough was one hour thirty-eight minutes, through the slough twenty minutes, and twenty minutes more to the place of accident. That was good time for that season of the year. In the slough attempted to pass. The "Hunt" was then allowed forty pounds to the square inch. The "Hunt" coming down had been, and has since been, in the habit of carrying from forty to fifty pounds of steam; carry all they can get. Have been in her with fifty pounds; know nothing about the "New World." I think the "Hunt" would beat the "New World" with forty pounds. The time we made was, for that season of the year, very good.

Charles W. Haskell, for libellant.

Was on board the "New World;" was scalded. About ten minutes before the explosion I was standing looking at the engine; we saw the engineer was evidently excited, by his running to a little window to look out at the boat behind; he repeated this ten or fifteen times in a very short time. The boat seemed going very fast. I looked down and saw the hearth of the fire room; saw them breaking up a half barrel of what appeared to be rosin. I attempted to go aft when the explosion occurred, and I fell and lost my senses. I merely saw them breaking up the barrel, did not see it put on the fire. The engineer was very much excited. I went aft through apprehension that there would be an explosion; I was frequently admonished to do so by my friend Mr. Rush. He left about five minutes before, and was not hurt.

Cross examined.—From the speed of the boat I thought she must be under a heavy pressure of steam, and from the excitement of the engineer. I saw the rosin about the same time I noticed the engineer running backwards and forwards; it was five or six minutes before I left to go aft. This engineer appeared to be excited during all the time I stood there. I started aft four or five minutes after I saw the breaking up of the rosin; my friend had gone aft before I observed the breaking up of the rosin.

Deposition of William A. Lightall, (de bene esse,) taken by consent before A. G. Randall, notary public, called by the plaintiff.

I examined the steamer "New World" the morning after the explosion. I examined the steam chimney; there was no stay connecting the inner and outer shell opposite the steam pipe; if there had been a stay or brace, it would merely have made a rent, and not given way. On the whole, in my opinion, the mere making of a rent would not have occasioned any serious accident, in my opinion. I think there was a hole pierced in the steam chimney, opposite the steam pipe, to receive a stay or brace, but was riveted up with plug rivets. I think, as a measure of safety, that a stay or brace of the kind described was necessary. I am familiar with steam-engines and steam-boilers of all descriptions, and have had long experience, and am at present an inspector for steam-boilers and engines for the port of San Francisco, having been appointed by the judge of the United States district court. I have often seen steam chimneys give way around the seams without causing explosion, by reason of being well braced, and it is common for such things to take place.

Cross examined.—I examined the steam chimney two or three times after the explosion, and while it was being repaired.

Question. Were you sworn as a witness in a case, in the fourth judicial district, in court, in case of Sullivan vs. New World?

Answer. Yes.

Question. Did you not testify, on that occasion, that you made but one examination of the place broken by the explosion, or of the shaft that gave away?

Answer. I don't recollect.

Question. Did you not testify, on that occasion, that you only examined the sheet broken by the explosion, before it was taken out, and that you made the examination by merely looking in at the smoke-pipe door?

Answer. I don't recollect.

Question. Was the question not put to you, at that time, as to the extent to which the iron was worn then; and did you not reply that you could not answer, because you merely saw it before it was disturbed after the explosion, and that, too, by looking in at the smoke-pipe door?

Answer. I believe I did.

WILLIAM A. LIGHTALL.

Sworn to and subscribed before me the 19th day of March, A. D. 1852. A. G. RANDALL, *Notary public.*

The above deposition to be used de bene esse, saving all legal exceptions, except as to the form of taking.

H. D. HEPBURN, *for plaintiff.*
A. T. WILLSON, *Proc. for claimants.*

William Van Wart.

Am 32 years of age; am an engineer; have been 16 years; first engineer on board the New World ever since she was launched, except about twenty days. Was on board at the time of the accident. She was built by W. H. Brown, of New York; was launched 28th January, 1850; only employed on a trial trip before she came out here. She was built for a first-class boat; she was built to came out here. Castings as thick as they make them. I examined the boilers every Sunday; go through them myself; have always done it ever since I had charge of an engine. I have never detected any defect in the iron or the way the engine was put together. The boiler and steam chimney are connected by socket bolts. The space between each bolt was twelve inches. The steam pipe is twelve inches in diameter. After the explosion the position of the socket bolts was unchanged. The model I hold represents the steam chimney. The nuts or bolts are on the outside. The rent occurred on the inside [of] the chimney. Went into the smoke *into the smoke* chimney and came out of the furnace door. The socket bolts were raised up and drawn through. Only one of the bolts was lacking, in consequence of the steam pipe being put in near the upper edge of the steam pipe. The steam and water had worn away the iron on the lower edge of the pipes. It had worn away some two or three feet, in some places not so thin as in others. The thinnest was right under the steam pipe, where it started. The part worn was about an inch and a half in width, right along a seam of rivets. They do not usually have an extra socket bolt in chimneys of that size. It was two inches from where it gave way to the next socket bolt. The space between the inside linings is about 12 inches. The strength of the steam chimneys had never been strained while in my care. Boat had been inspected by State inspector. He allowed 40 pounds. Lightall allowed 35 pounds. The most I had ever carried was 38 pounds previous to explosion. When running against the "Hunt" carried 35, 32, average about 25 pounds. In going through the slough used to let our steam run down generally. On the day of the explosion we were not driven to our speed. I was not on the watch; I gave the orders. When I examined, used to take a hammer and go on the inside and sound it. I never used pitch, rosin, or tar, or any thing of that sort, that I remember, to raise steam. We had rosin on board to sprinkle the blower belt. We would get 2 or pounds; would last 4 or 5 months. After the "New World" arrived here, her machinery was repaired and thoroughly overhauled. The boiler and steam chimney were new when put into the boat; they will generally go from 2 to 3 years, sometimes more; depends upon how hard they use them. We generally look for the first defects next to the water. I don't recollect what amount of steam we carried on the voyage down that day. I could not have made any other examination than I did make without taking the chimney to pieces. Could not get at it.

Cross examined.—The boiler is 11 feet shell in diameter, 24 feet in

length; pretty good-sized boiler. Have not measured the diameter of the steam pipe. The steam pipe is put in after the chimney is constructed. If a bolt comes in the way it is cut out. I have seen a bolt attached to a brace across the steam pipe. The pressure of the steam is uniform over the surface of the chimney. The effect of an irregularity of *survice* is to increase the *the* wear. My mode of testing the uniformity of a steam chimney is to sound with a hammer. There is a difference of sound; if very thin, might make a dent. The thin place was so close to a seam of rivets that you could not tell by the hammer. If you suspected the spot, you might take the chisel and cut a hole. Vessel left New York 27th February, 1850; arrived in July. She was laid up two or three weeks. She run a spell, and was then laid up, and had guards put on her. She was running all the time, except when getting those repairs. We have had some little strife between us and the "Hunt" as to who should get to Benicia first. There was an agreement made that one should go first. I think it was a trip or two before. Did not swear it was a trip or two afterwards at the former trial. It was to save fuel. Keeping the boats strained for a year would wear them out more quickly than if used moderately.

To the court. I recollect distinctly examining the steam chimney the Sunday before with a hammer. I remarked upon their good condition. There was no way of ascertaining the existence of a defect near the rivets of a steam chimney on the ordinary examination. Sullivan called at the time of this accident. Day laborers got about $5 per day.

Charles McKee.

Am 36 next April. Was assistant engineer on board the "New World" at the time of the explosion. We were then carrying 23 pounds steam, the most we had carried that day. I could not say exactly. We were endeavoring to carry about 25 pounds of steam as near as we could keep it. I had been since the 28th January, 1851. Shortly after the "Confidence" arrived.

Samuel Green, engineer of the "Wilson G. Hunt."

We were in the rear of the "New World" at the time of the accident; we were not running as fast as we had been on previous days; we were trying to gain Benicia landing, but owing to coal not being of good quality we did not make as good time; we did not, to my recollection, make any attempt to pass the "New World;" we never did in the slough; she never did attempt to pass us, so far as my knowledge extends; it is generally considered that it would be imprudent to pass each other in the slough. I have been acquainted with Mr. Van Wart 15 months. He is considered to be a skilful, prudent, and careful engineer by those acquainted with the business.

Cross examined.—I know of an attempt by the "Hunt" to pass the "New World" only when she was lying in the still, having run into the bush; there have been several instances of the "New World" passing the "Hunt" between Sacramento and the place of accident; don't know whether the "Hunt" has not passed the "New World." I was in the engine room. I don't think there was any attempt that

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day to pass the "New World" by the "Hunt;" if there was an attempt by the pilot, I am generally notified through the speaking trumpet. There are places between Sacramento and Cash creek where the boats might pass, providing the boats did crowd us.

(*McKee resumed.*)

We were never apprehensive of an attempt to pass us in the slough, that is, when we were under way. I never have used any pitch, tar, or rosin for the purpose of increasing the speed of the boats; never used them as fuel at all on board the boats. We examined the boilers every Sunday; it is the only time we have for examination. We always made a point to examine all the boilers on Sunday; up to that period we had never missed a Sunday. We made our examinations by going into the steam chimney, taking a hammer and chisel with us; we rap round with the hammers to sound the iron; as more or less sediment sticks on the iron, we scrape it off, to find out a crack in the iron. I never discovered any defect in it previous to the explosion.

Cross examined.—At that time the inspector's certificate was 40 inches; we had 23. I think the steam pipe is a twelve-inch pipe. I am quite certain we had not more than a pound or so of rosin on board.

Alfred Todd.

Was pilot on board the "New World" at the time of the explosion; the boats were not racing on that day, or contending. Have been attached to the "New World" ever since she was launched; have been 1st pilot ever since 15th October a year ago; have never known "Hunt" and "New World" to pass each other in the slough. It is understood between us not to attempt such a thing.

William Cook.

I repaired the New World after the explosion. I am a boiler ; have been in the business 19 or 20 years; never did any work on her before the explosion. The steam chimney, as far as regards the workmanship, was good—satisfactory. The use of the stay bolt is to prevent collapsing; I mean the two plates from collapsing from a vacuum being formed; the accident that did occur was an explosion. A stay brace might assist to hold the sheet, even if a rent had occurred. I never heard of a stay bolt, except what I put myself. I put it in as a new idea—an improvement. I had a conversation with you and Light-all. The braces were close enough in her. I have examined a number of boilers after explosion; the mode of explosion is a common event. I have known them to occur where there is merely a rent, where the sheet did not give way—there was then little mischief. The socket bolts and braces have a serious influence to prevent the accident.

To the court. There was a socket bolt within a couple of inches; the head had been pulled through. If there had been a stay bolt it would have been pulled through; could not have had any effect in

diminishing or preventing explosion. I put a brace in there for the "New World" when I repaired her; don't think she was any stronger for it. I made the hole then, but did not mean to put it there; so I had to fill it up with something.

Mr. Van Wort.

Have never known, that I recollect of, an attempt by the "New World" and the "Hunt" to pass each other in the slough. Have measured the steam pipe; it is 12½ inches diameter outside; iron is a quarter of an inch thick.

Cook.

The material of the steam chimney was worn at this spot. It seemed to be pretty good throughout.

Horatio N. Squire.

Was clerk of Charles Minturn in 1851. He had the care of the "New World" at that time; he managed it for Edward Minturn and William Menzie. Brown was a part owner; he sold out before time of the accident.

William Tennyson.

Was a fireman on board at time of the explosion. Never used either pitch, tar, or rosin as a fuel; never saw it in any quantity on board. I was on watch; did not, nor did any one else, put any in the furnace. We were carrying 23 inches.

W. Lyons, (called by libellant.)

Have examined the steam pipe of the "New World." The circumference is 3 feet 9 inches and ¾. Did not measure outside of the oil cloth.

Cross examined.—I measured near the steam chimney.

Thomas Wright.

Was present at a conversation with Mr. Cook. It took place near an old boiler lying there. There was a steam chimney and an open space. Lightall said if there had been a brace from the flange it would have prevented the explosion. Mr. Cook agreed with Lightall, I am positive.

Mrs. Adelaide Bosler, (for King.)

Was matron of the hospital in June last. Libellant was either the 2d or 3d one brought there on 3d June. Mr. King was scalded worse than any of the rest, both inwardly and externally. Could not take nourishment for some days. Did not expect him to live. Until after the fire, 22d June, he was perfectly incapable of motion. He then got to be able to move his eyelids. About the end of August he could

move his hands. I left the hospital August 22d. He could not dress himself when I left. Dr. Chapin was resident physician. I should not have known King if I had not frequently seen him.

Edward J. Aldrich.

Am a practising physician. Was passenger on board the "New World," (early in June.) I recognise King as having been on board. I was engaged with him and others from the time of the explosion until 6 or 7 o'clock next day. He was severely burnt. There is a contraction of his fingers from which he cannot recover. Face and hands very much burnt. He cannot regain the use of his hands. His joints are destroyed. His hands might be straightened by an operation, but would be stiff.

Dr. A. B. Storry, (for King.)

Know the libellant. Saw him frequently, after the explosion, at the hospital. Don't know what time he left. His injuries very severe. Cannot recover. He cannot perform manual labor. He might, perhaps, sweep this room. He has a very slight motion. Labor is worth about $5 per day. Know the "New World" is a public passenger-boat.

Cross examined.—A common laborer can command $5 per day in the mines.

Joseph Reynolds.

I was a passenger on "New World" on the 3d of June last. Libellant was a passenger then. Saw King on board before the explosion. Did not know him before I saw him on boat before explosion. He remained in hospital until 25th or 30th November. He was carried there on morning of the 4th June. I was there until about middle of August. Used to visit the hospital after I left. Peddled newspapers there. There is a ticket office on board the "New World," and sometimes there are runners to sell tickets on wharves. These tickets are collected before the end of trip. When the tickets are collected, if passengers have *more*, they are called on to pay. Tickets were not collected when explosion took place. The "New World's" clerk did not collect tickets until after arrival at Benicia, and explosion happened before. Libellant is a poor man, so far as I know, and has been living on his friends since the explosion. I should not think him able to do any thing. I saw him before explosion in health. There are no employments in this city by which a man can make a livelihood without being able to work with his hands, unless he has a great many friends. I was disabled so as not to be able to work with my hands. I have earned my livelihood. The most of laborers get five dollars per day. It has been rather difficult, for the last seven or eight months, for strong, able men to get employment. The price for steerage passengers, on 3d June last, on "New World," was $5. I don't

know whether King was a steerage or cabin passenger. King, I took it, was a passenger. He was among the passengers, and had nothing to do. There was nothing about King that called my attention towards him more than any other person on board. Did not speak to him before explosion happened. I now recollect of having observed King a half dozen times before explosion happened. There were other passengers that I was not acquainted with that I recollect of having observed a half a dozen times. Don't recollect how he was dressed. Don't recollect any thing about his dress. Don't recollect whether he had a coat on. He was talking with a man I took to be a miner when I saw him. The man King was talking with was about middle aged. I don't recollect distinctly whether he was dressed in fine or coarse clothing. Think the man King was talking with had a coat on. Recollection not very fresh. I can't recollect whether I saw the man King was talking with twice. There was nothing, except that I did not see him doing any thing, that made me take King for a passenger. I lately prosecuted a suit in this court against the "New World" for having been scalded on board of it. I never was on board the "New World" before explosion. Never was at Sacramento before that day. I have come down three or four times on "New World" since explosion. King was among the passengers, and not among the hands. King was on the forward part of the boat. I saw him on the main deck, between the engine room and the doors that close in the boat at the forward part. The place where I saw King is where the foremast hands congregate together. (It is admitted that King is 39 years of age.)

The claimants then call as a witness—

George P. Porter, who testified he knew King; witness was clerk of the boat for two years and [a] half before explosion. Being clerk, I issue and collect passage tickets. I knew King by sight before the explosion; he had not travelled on my boat before that time to my knowledge. (*Obj.*) It is customary to pass all steamboat men, without any exceptions. I have been connected with steamboats about four years; this is a custom on board all boats. Just previous to his being on board of us, he was on board the "Wilson G. Hunt." I should not have collected fare from libellant on that day; I was informed by the steward that he was on board, and that he had been on board the "Wilson G. Hunt." This custom is well known amongst people engaged in steamboating.

Cross examined.—There was no contract to carry men free who had been in their employ. I had not seen Mr. King on that day before; I had seen him somewhere in the "World" before. Orders had never been given me to cease passing this class of persons; this custom was invariable; never knew an exception. Know Mr. Dolan; never paid his passage.

Wood Hutchins, (for defence.)

Am master of "New World." Know King; had a conversation

with him about half an hour before the boat sailed; said he wanted to go to San Francisco; wanted me to pass him down. I told him I would do so. To pass him down, means to take him without pay. King had been before that employed as a waiter in the "New World," (in the cabin;) he left about 1st January, 1851. Have been connected with steamboats fifteen years; have been master five years. Heard Mr. Porter testify on last case. It is a general custom not to charge steamboat men.

Cross examined.—I was born in Cortland, West Chester county, New York. Have been on the "Neptune," Captain Wilson; on board about three months. Was on board the "Huntress," as mate of her. "Neptune" ran from Charleston to New York. I arrived here about November a year ago. First took charge of her about December 3 or 4, 1850; King was on the boat then. Don't recollect his going passenger, except on that occasion. I have often seen King on the boat, and he applied to me to get him a new place. When he asked me to pass him down, I was on board the boat standing forward by the side of the pilot house; I think the pilot was present; his name was Alfred Todd. I have spoken to our pilot about passing King down. King came to me and told me he had brought suit; I did not tell him about my giving him a free ticket. I was told it was important to have it understood he was a free passenger.

John Yeomans, (for defence.)

Am steward on the "New World," and have been ever since July 3d. Was employed on her before the explosion; had been employed some six or seven months. Know King; know of his having travelled up and down between the time he left the boat and the explosion. Was acquainted with him there. All I know is, that steamboat men never pay.

Cross examined.—I was bar-keeper at the time of the explosion; I was made steward when the other steward left. I don't remember who first spoke to me about testifying. King had been out of work some time, and I don't suppose he would have cared to pay his fare.

Direct.—I recollect seeing King eating with the servants; deck passengers and cabin take their meals at the same table.

James Carlan, (by stipulation,) being duly sworn, says:

I have been residing in the mines for the last six months. I have been on the steamboat "New World." I have been employed on the steamboat "New World," first as porter, and after as second steward. I went from the "Gold Hunter" to "New World;" I was on "Gold Hunter" when Truemons, Hutchinson & Co. failed. I think I went on to the "New World" in October, 1850, about a month after the arrival at this place of the "New World;" I served on board, I think, two months in all. I left once, and joined her again; I joined her in Sacramento as second steward; Captain Wakeman was captain, Porter clerk, and William T. Campbell was steward. I have travelled on

her two or three different times as passenger since I left her; once I paid Porter five dollars, and once I bought a ticket of Joe Grant. I delivered the ticket that I bought of Grant to the steward or Porter, I don't recollect which. I waited on passengers. I was well acquainted with Porter, and he was well acquainted with me.

JAMES CARLAN.

Subscribed and sworn before me, on this 4th day of May, 1852.

A. T. WILLSON, *Not. pub.*

May 4th, 1852. It is hereby stipulated, that the above deposition may be read in evidence on the trial of the above entitled cause, and shall be taken and considered as if taken in strict pursuance of law.

A. T. WILLSON,
Proc. for defendant.

The proctors for the claimants and defendants called Alfred Todd, the pilot of the "New World," and offered to prove by him the same facts sworn to by witness (Captain Hutchins) relative to King's being a free passenger on the steamer "New World," but upon a suggestion by the court that this was unnecessary, the witness was not interrogated upon this point. On the part of King it is conceded that Todd, the pilot of the boat, would have sworn to the same effect that (Captain) Hutchins did, namely, that King did apply to Captain Hutchins for a free passage for the trip when the explosion occurred, and the same was granted him before the boat started from Sacramento.

NORTHERN DISTRICT OF CALIFORNIA,
U. S. district court.

I, John A. Monroe, clerk of the United States district court for the northern district of California, do hereby certify, that the annexed copy, from pages one to fifty-one inclusive, is a full, true, and accurate transcript of the records, pleadings, testimony, and decrees and orders in the case of Frederick George King *vs.* The steamer "New World," &c.

In testimony whereof I have hereunto set my hand and affixed the seal of this court this 31st day of January, in the year of our [L. S.] Lord one thousand eight hundred and fifty-three, and of our independence the seventy-seventh.

JOHN A. MONROE, *Clerk*,
By HENRY B. JANES, *Deputy*.